

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:07-CV-166-H
ALL CASES

LEE LEWIS and JANICE HOSLER, et al.,

Plaintiffs,

v.

SMITHFIELD PACKING COMPANY, INC.,

Defendant.

**MEMORANDUM AND
RECOMMENDATION**

This case comes before the court on the consent motion (D.E. 332) of plaintiffs Lee Lewis, et al. (“plaintiffs”) and defendant Smithfield Packing Company, Inc. (“defendant”) for summary judgment dismissing the claims of certain opt-in plaintiffs as time-barred. The motion is supported by the declaration of Teri Beard (D.E. 332-1), defendant’s Human Resources Information System Benefits Manager.


The Fair Labor Standards Act provides plaintiffs with a maximum three-year statute of limitations to pursue a claim. 29 U.S.C. § 255(a). A claim is deemed to commence upon the date the plaintiff files his consent to opt in to the lawsuit. 29 U.S.C. § 256(b). The instant motion seeks to dismiss the claims of the opt-in plaintiffs listed below, who, according to defendant’s record, did not work at defendant’s Tarheel, North Carolina facility within the three-year period prior to the date their consents were filed. Plaintiffs’ counsel concedes that there is no evidence that these plaintiffs have timely claims and that the claims are subject to dismissal pursuant to Rule 56 of the Federal Rules of Civil Procedure. The court finds that no genuine issues of material fact are presented and that the relief sought should be allowed.

For the foregoing reasons, it is RECOMMENDED that the parties' consent motion for summary judgment dismissing the claims of the opt-in plaintiffs below as time-barred be ALLOWED and this action be DISMISSED as to them:

- | | |
|-----------------------------------|--------------------------|
| (1) Martin A. Brown | (19) Anthony Bell |
| (2) Carnell York | (20) Carletha Simmons |
| (3) Connell Haywood | (21) Larry W. Douglas |
| (4) Johnny M. Sampson | (22) Melissa Davis |
| (5) Deborah Harrington | (23) James L. Washington |
| (6) Sharlene Agnes Hager | (24) Tanguela C. Spivey |
| (7) Kashmira Williams Scarborough | (25) Martha P. Diggs |
| (8) Tiffany Caprenia Carroway | (26) Sabrina L. Hunt |
| (9) Kevin Joel Garcia Valez | (27) Tenille R. Walden |
| (10) Derrick Anthony Malachi | (28) Isaac D. Whitted |
| (11) Corinna McDaniel | (29) John L. Williams |
| (12) Charles A. Baldwin | (30) Bruce Paul |
| (13) Trina P. Singletary | (31) Jennifer B. Lambert |
| (14) James P. Stephens | (32) Tamika Hall |
| (15) Jose Chavez Rebollar | (33) Brandon Cook |
| (16) Tonya Ellison | (34) James Young |
| (17) Benjamin Waye | (35) Terry D. McDonald |
| (18) Jasey W. Ward | (36) Marie Bullard |

The Clerk shall send copies of this Memorandum and Recommendation to counsel for the respective parties, who have 14 days, or such other period as the court specifies, to file written objections. Failure to file timely written objections bars an aggrieved party from receiving a de novo review by the District Judge on an issue covered in the Memorandum and Recommendation and, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Judge.

SO ORDERED, this 12th day of July 2010.


James E. Gates
United States Magistrate Judge